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Rule 4. Summons.

(a) Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons and cause it to be delivered for service to a person authorized by this rule to serve process.

(b) Form. The summons shall be styled in the name of the court and shall be dated and signed by the clerk; be under the seal of the court; contain the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the address of the plaintiff; and the time within which these rules require the defendant to appear, file a pleading, and defend and shall notify him that in case of his failure to do so, judgment by default may be entered against him for the relief demanded in the complaint. [In accordance with the amendments to Rule 12(a), the form for summons issued pursuant to this subsection has been amended and can be found at <https://courts.arkansas.gov/aoc/forms>.] (c) By Whom Served. Service of summons shall be made by

(1) a sheriff of the county where the service is to be made, or his or her deputy, unless the sheriff is a party to the action;

(2) any person appointed pursuant to Administrative Order No. 20 for the purpose of serving summons by either the court in which the action is filed or a court in the county in which service is to be made;

(3) any person authorized to serve process under the law of the place outside this state where service is made; or

(4) in the event of service by mail or commercial delivery company pursuant to subdivision (d)(8) of this rule, by the plaintiff or an attorney of record for the plaintiff.

(d) Personal Service Inside the State. A copy of the summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made upon any person designated by statute to receive service or as follows:

(1) Upon an individual, other than an infant by delivering a copy of the summons and complaint to him personally, or if he refuses to receive it, by offering a copy thereof to him, or by leaving a copy thereof at his dwelling house or usual place of abode with some person residing therein who is at least 14 years of age, or by delivering a copy thereof to an agent authorized by appointment or by law to receive service of summons.

(2) When the defendant is under the age of 14 years, service must be upon a parent or guardian having the care and control of the infant, or upon any other person having the care

and control of the infant and with whom the infant lives. When the infant is at least 14 years of age, service shall be upon him.

(3) Where the defendant is a person for whom a plenary, limited or temporary guardian has been appointed, the service must be upon the individual and the guardian. If the person for whom the guardian has been appointed is confined in a public or private institution for the treatment of the mentally ill, service shall be upon the superintendent or administrator of such institution and upon the guardian.

(4) Where the defendant is incarcerated in any jail, penitentiary, or other correctional facility in this state, service must be upon the administrator of the institution, who shall deliver a copy of the summons and complaint to the defendant. A copy of the summons and complaint shall also be sent to the defendant by first class mail and marked as "legal mail" and, unless the court otherwise directs, to the defendant's spouse, if any.

(5) Upon a domestic or foreign corporation or upon a partnership, limited liability company, or any unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, partner other than a limited partner, managing or general agent, or any agent authorized by appointment or by law to receive service of summons.

(6) Upon the United States or any officer or agency thereof, by service upon any person and in such manner as is authorized by the Federal Rules of Civil Procedure or by other federal law.

(7) Upon a state or municipal corporation or other governmental organization or agency thereof, subject to suit, by delivering a copy of the summons and complaint to the chief executive officer thereof, or other person designated by appointment or by statute to receive such service, or upon the Attorney General of the state if such service is accompanied by an affidavit of a party or his attorney that such officer or designated person is unknown or cannot be located.

(8)(A)(i) Service of a summons and complaint upon a defendant of any class referred to in paragraphs (1) through (5), and (7) of this subdivision (d) may be made by the plaintiff or an attorney of record for the plaintiff by any form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee. The addressee must be a natural person specified by name, and the agent of the addressee must be authorized in accordance with U.S. Postal Service regulations. However, service on the registered agent of a corporation or other organization may be made by certified mail with a return receipt requested.

(ii) Service pursuant to this paragraph (A) shall not be the basis for the entry of a default or judgment by default unless the record contains a return receipt signed by the addressee or the agent of the addressee or a returned envelope, postal document or affidavit by a postal employee reciting or showing refusal of the process by the addressee. If delivery of mailed process is refused, the plaintiff or attorney making such service, promptly upon receipt of notice of such refusal, shall mail to the defendant by first class mail a copy of the summons and complaint and a notice that despite such refusal the case will proceed and that judgment by default may be rendered against him unless he appears to defend the suit. Any such default or judgment by default may be set aside pursuant to Rule 55(c) if the addressee demonstrates to the court that the return receipt was signed or delivery was refused by

someone other than the addressee or the agent of the addressee.

(B) Alternatively, service of a summons and complaint upon a defendant of any class referred to in paragraphs (1)-(5) and (7) of this subdivision of this rule may be made by the plaintiff by mailing a copy of the summons and the complaint by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgement conforming substantially to a form adopted by the Supreme Court and a return envelope, postage prepaid, addressed to the sender. If no acknowledgement of service is received by the sender within twenty days after the date of mailing, service of such summons and complaint shall be made pursuant to subdivision (c)(1)-(3) of this rule in the manner prescribed by subdivisions (d)(1)-(5) and (d)(7). Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within twenty days after mailing, the notice and acknowledgement of receipt of summons. The notice and acknowledgement of receipt of summons and complaint shall be executed under oath or affirmation. [In accordance with the amendments to Rule 12(a), the form for summons issued pursuant to this subsection has been amended and can be found at <https://courts.arkansas.gov/aoc/forms>.]

(C) Service of a summons and complaint upon a defendant of any class referred to in paragraphs (1) through (5) and (7) of this subdivision may also be made by the plaintiff or an attorney of record for the plaintiff using a commercial delivery company that (i) maintains permanent records of actual delivery, and (ii) has been approved by the circuit court in which the action is filed or in the county where service is to be made. The summons and complaint must be delivered to the defendant or an agent authorized to receive service of process on behalf of the defendant. The signature of the defendant or agent must be obtained. Service pursuant to this paragraph shall not be the basis for a judgment by default unless the record reflects actual delivery on and the signature of the defendant or agent, or an affidavit by an employee of an approved commercial delivery company reciting or showing refusal of the process by the defendant or agent. If delivery of process is refused, the plaintiff or attorney making such service, promptly upon receipt of notice of such refusal, shall mail to the defendant by first class mail a copy of the summons and complaint and a notice that despite such refusal the case will proceed and that judgment by default may be rendered against the defendant unless he or she appears to defend the suit. A judgment by default may be set aside pursuant to Rule 55(c) if the court finds that someone other than the defendant or agent signed the receipt or refused the delivery or that the commercial delivery company had not been approved as required by this subdivision.

(e) Other Service. Whenever the law of this state authorizes service outside this state, the service, when reasonably calculated to give actual notice, may be made:

- (1) By personal delivery in the same manner prescribed for service within this state;
- (2) In any manner prescribed by the law of the place in which service is made in that place in an action in any of its courts of general jurisdiction;
- (3) By mail as provided in subdivision (d)(8) of this rule;
- (4) As directed by a foreign authority in response to a letter rogatory or pursuant to the provisions of any treaty or convention pertaining to the service of a document in a foreign country; (5) As directed by the court.

(f) Service By Warning Order.

(1) If it appears by the affidavit of a party seeking judgment or his or her attorney that, after diligent inquiry, the identity or whereabouts of a defendant remains unknown, or if a party seeks a judgment that affects or may affect the rights of persons who are not and who need not be subject personally to the jurisdiction of the court, service shall be by warning order issued by the clerk. This subdivision shall not apply to actions against unknown tortfeasors.

(2) The warning order shall state the caption of the pleadings; include, if applicable, a description of the property or other res to be affected by the judgment; and warn the defendant or interested person to appear within 30 days from the date of first publication of the warning order or face entry of judgment by default or be otherwise barred from asserting his or her interest. The party seeking judgment shall cause the warning order to be published weekly for two consecutive weeks in a newspaper having general circulation in the county where the action is filed and to be mailed, with a copy of the complaint, to the defendant or interested person at his or her last known address by any form of mail with delivery restricted to the addressee or the agent of the addressee.

(3) If the party seeking judgment has been granted leave to proceed as an indigent without prepayment of costs, the clerk shall conspicuously post the warning order for a continuous period of 30 days at the courthouse or courthouses of the county wherein the action is filed. The party seeking judgment shall cause the warning order to be mailed, with a copy of the complaint, to the defendant or interested person as provided in paragraph (2). Newspaper publication of the warning order is not required.

(4) No judgment by default shall be taken pursuant to this subdivision unless the party seeking the judgment or his or her attorney has filed with the court an affidavit stating that 30 days have elapsed since the warning order was first published as provided in paragraph (2) or posted at the courthouse pursuant to paragraph (3). If a defendant or other interested person is known to the party seeking judgment or to his or her attorney, the affidavit shall also state that 30 days have elapsed since a letter enclosing a copy of the warning order and the complaint was mailed to the defendant or other interested person as provided in this subdivision.

(g) Proof of Service. The person effecting service shall make proof thereof to the clerk within the time during which the person served must respond to the summons. Failure to make proof of service, however, shall not affect the validity of service. If service is made by a sheriff or his deputy, proof may be made by executing a certificate of service or return contained in the same document as the summons. If service is made by a person other than a sheriff or his deputy, the person shall make affidavit thereof, and if service has been by mail or commercial delivery company, shall attach to the affidavit a return receipt, envelope, affidavit or other writing required by Rule 4(d)(8). Proof of service in a foreign country, if effected pursuant to the provisions of a treaty or convention as provided in Rule 4(e)(4), shall be made in accordance with the applicable treaty or convention.

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any summons or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the summons is issued.

(i) Time Limit for Service. (1) If service of the summons and a copy of the complaint is not made upon a defendant within 120 days after the filing of the complaint or within the time period established by an extension granted pursuant to paragraph (2), the action shall be dismissed as to that defendant without prejudice upon motion or upon the court's initiative. If service is by mail or by commercial delivery company pursuant to subdivision (d)(8)(A) & (C) of this rule, service shall be deemed to have been made for purposes of this subdivision (i) on the date that the process was accepted or refused.

(2) The court, upon written motion and a showing of good cause, may extend the time for service if the motion is made within 120 days of the filing of the suit or within the time period established by a previous extension. To be effective, an order granting an extension must be entered within 30 days after the motion to extend is filed, by the end of the 120-day period, or by the end of the period established by the previous extension, whichever date is later.

(3) This subdivision shall not apply to service in a foreign country pursuant to subdivision (e) of this rule or to complaints filed against unknown tortfeasors.

(j) Service of Other Writs and Papers. Whenever any rule or statute requires service upon any person, firm, corporation or other entity of notices, writs, or papers other than a summons and complaint, including without limitation writs of garnishment, such notices, writs or papers may be served in the manner prescribed in this rule for service of a summons and complaint. Provided, however, any writ, notice or paper requiring direct seizure of property, such as a writ of assistance, writ of execution, or order of delivery shall be made as otherwise provided by law.

Comment Text:

Addition to Reporter's Notes, 2014 Amendment: For clarity, Rule 4(i) has been restructured and divided into paragraphs. Also, the sentence dealing with refusal to accept service that now appears in paragraph (1) has been limited to service by mail under subdivision (d)(8)(A) or by commercial delivery company under subdivision (d)(8)(C). The result of this change is to exclude service by first class mail pursuant to subdivision (d)(8)(B), under which refusal plays no role.

More significantly, the subdivision has been revised to make clear that a motion to extend the time for service is proper if filed within 120 days of the filing of the complaint or within the time period provided by a previous extension of time. Although the subdivision did not address subsequent extensions, they have long been considered proper in light of *Dougherty v. Sullivan*, 318 Ark. 608, 887 S.W.2d 305 (1994). See also *Henyan v. Peek*, 359 Ark. 486, 199 S.W.3d 51 (2004); *Wilkins v. Food Plus, Inc.*, 99 Ark. App. 64, 257 S.W.3d 107 (2007). The Court of Appeals, however, held in *Powell v. Fernandez*, 2013 Ark. App. 595, that a subsequent extension is allowed only if sought within 120 days of the filing of the complaint. The amendment overrules *Powell* on this point.

History Text:

History. Amended February 1, 1982; amended May 16, 1983; amended June 9, 1984, effective September 1, 1984; amended July 1, 1986, effective September 15, 1986; amended

November 21, 1988, effective January 1, 1989; amended November 20, 1989, effective January 1, 1990; amended November 11, 1991, effective January 1, 1992; amended November 8, 1993, effective January 1, 1994; amended November 18, 1996, effective March 1, 1997; amended January 22, 1998; amended January 28, 1999; amended February 1, 2001; amended January 24, 2002; amended March 13, 2003; amended January 22, 2004; amended May 25, 2006; amended January 1, 2008; amended May 24, 2012, effective July 1, 2012, corrected by per curiam order August 14, 2012; amended March 13, 2014, effective July 1, 2014.

Associated Court Rules:

Rules of Civil Procedure

Group Title:

II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

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